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LEGISLATION EX POST FACTO IN CHANGING THE PUNISHMENT FOR CRIME.

The United States Supreme Court considers the constitutionality of a statute of South Carolina changing the punishment of murder from hanging to electrocution, so far as regards such an offense committed prior to the statute is concerned, and upholds same as not being an *ex post facto* law. Maloy v. South Carolina, 35 Sup. Ct. 507.

Mr. Justice McReynolds, in speaking for the court, refers to Calder v. Bull, 3 Dall. 386, 390, as to the constitutional sense of *ex post facto* law, wherein it is said that: "Every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed" is an *ex post facto* law.

The contention was made that: "Any statute enacted subsequent to the commission of a crime which undertakes to change the punishment therefor is *ex post facto* and unconstitutional unless it distinctly modifies the severity of the former penalty." If we substitute for the word "modifies," the word, mitigates or lessens, the contention would be more sharply expressed.

But in this inquiry we should remember, that the constitutional expression, "ex post facto law" is a limitation on state power, and it not being imposed the state would be free even to make more severe the punishment that has been affixed to the punishment of a prior crime. State constitutions generally contain the same prohibition on legislative power. The same observation is pertinent as to them. Its presence, however, in one constitution or the other implies the necessity of putting a curb on legislative power. The conclusion, therefore, is irresistible that the words of limitation must be taken according to the sense in which they are used.

Calder v. Bull, *supra*, was decided in the very early history of our country and similar provisions in state constitutions ought to be taken in the same sense in which it was construed, unless we may suppose that a right amply protected by the federal Constitution and from abundance of caution carried into state constitutions, was declared in a different sense in the latter. There is a well recognized rule that when a statute of one state is carried into the laws of another state, it goes there with prior construction. Why is not the same rule applicable to constitutional provisions?

Taking it, then, that we are seeking to ascertain whether a law is *ex post facto*, we must inquire, as a fact, whether, as in the case before the court, it "inflicts a greater punishment than the law annexed to the crime when committed."

We believe it was urged by Patrick that an unapplied-for commutation from execution to life imprisonment was a violation of his constitutional right, and it may be conceivable that one might prefer to be executed than doomed to suffer life imprisonment. But his claim was overruled, and rightly, too, we think, because the mere preference of a convict is no criterion by which to judge the constitutionality of a law. In well understood acceptance the death penalty is regarded as the supreme punishment of American law. Anarchists may well be thought less deterred by the death penalty for their acts than by solitary imprisonment for the remainder of their life. But the law would regard the latter punishment as a mitigation of the former.

And so if the means or method of inflicting death—a sudden snuffing out of the vital spark instead of slow strangulation to the end—is changed, some convicts might prefer the strangulation. But the law may declare that the former is a mitigation in severity of the latter, though instances have occurred where death by strangulation did

not supervene, though officially declared to have so done.

Refinement such as plaintiff in error invoked have not so great place in discussing the meaning of a limitation on power as it might have in considering the extent of a granted power, which in itself is a limitation on right.

This limitation on the right of a state is construed by our supreme court as it generally construes other similar restrictions in the federal Constitution, that is to say, the words of the Constitution are taken as controlling actual, practical considerations and not according to metaphysical claims hindering their application. By this kind of construction only may our dual system of government preserve to the general government and to the states their rightful control, whether in public functions or the regulation of private right. The contention of plaintiff in error was disallowed.

NOTES OF IMPORTANT DECISIONS

RESPONDEAT SUPERIOR—VERDICT IN FAVOR OF SERVANT AND AGAINST MASTER.—In 79 Cent. L. J. 4, there was an article by our editor under the title: Inconsistent Verdict in an Action Against a Master and His Servant, in which it was discussed: "Whether, where the liability of the master or a corporation is dependent upon the wrongful act of the servant or agent, a verdict against the latter is a necessary predicate, in form or effect, of a verdict against the former, both being sued."

Consideration of this question recurs in a case decided by Supreme Court of Iowa, where it was held that a corporation and its servants being sued in tort for an act committed by the latter and there being a verdict in their favor and against the corporation, no judgment could be entered against the corporation. Hobbs v. Illinois Cent. R. Co., 152 N. W. 40.

This case shows that it follows prior decision relying on Doremus v. Root, 23 Wash. 715, 63 Pac. 574, 520 L. R. A. 649, which case, however, relied on other cases where there was no inconsistency in verdicts but only prior verdicts in favor of servants. It seems to us that there is a different principle involved, and, at all events, the inconsistency in a verdict does not prevent a master from suing a servant for recovery where he pays. Indeed, it would appear that not only is the part of such a verdict releasing the servant not binding on the master, but the record in such a case when read as it should be read ought to be conclusive for the master in his right to recover against the servant. This would come under the principle Falsa demonstratio non nocet. While the Iowa case cites much authority, it all harks back to Doremus v. Root, which, as we have seen, was not directly supported by authority. As authority to the contrary we cite, Ill. Cent. R. Co. v. Clarke, 85 Miss. 691, 38 So. 97; Verlinda v. Stone-Webster Eng. Co., 44 Mont. 251, 119 Pac. 573; Gulf, etc., Ry. Co. v. James, 73 Tex. 12, 10 S. W. 744, 15 Am. St. Rep. 743; Schumpert v. Ry., 65 S. E. 322, 43 S. E. 813, 95 Am. St. Rep. 802; Carson v. Ry., 68 S. C. 55, 46 S. E. 525.

The trouble about the rule the Iowa court supports is that it penalizes a plaintiff for acting strictly within his rights, and, howsoever plain his case against all defendants might be, a jury by its illogical act may defeat his rights, notwithstanding that its act is in no wise conclusive against the master having recourse for any judgment it might pay in suing his servant. The jury do say that in finding against the master the servant is in fault, but it refuses to record a finding to this effect.

EVIDENCE—OPINIONS GIVEN BY NON-EXPERT WITNESSES.—In a case decided by Texas Court of Criminal Appeals, there was a claim by an accused that she shot deceased in self-defense. Latham v. State, 172 S. W. 797.

Accused testified that immediately before she shot, deceased shifted his knife from his right to his left hand, and dropped his right hand down to his belt as though to draw a pistol. A bystander testified to the same thing and that the acts and conduct of deceased produced the impression on his mind that he was attempting to draw a pistol. Testimony of this impression was held to be admissible.

In the opinion by the Texas court there is given such an apt description of the things an ordinary witness may testify about, and which in a sense at least are mere opinions, that we think it worthy of reproduction.

It was said: "The instantaneous conclusions of the mind as to the appearance, condition or mental or physical state of persons, animals or things, derived from observation of a variety of facts presented to the senses at one and the same time, are, legally speak-

ing, matters of fact and are admissible in evidence. The matters referred to are those of which the mind acquires knowledge by the simultaneous action of several of the senses so that an impression is produced on the mind which cannot be traced to any one fact perceived by a single sense, but a statement of which is nevertheless a statement of a matter of fact. A witness may say that a man appeared intoxicated or angry or pleased. In one sense the statement is a conclusion or opinion of the witness, but in a legal sense, and within the meaning of the phrase, 'matter of fact,' as used in the law of evidence, it is not opinion, but is one of the class of things above mentioned, which are better regarded as matters of fact. * * * This character of evidence is treated in many cases as opinion, admitted under exception to the general rule, and in others as matter of fact—'shorthand statement of fact' as it is called. It seems more accurate to treat it as fact, as it embraces only those impressions which are practically instantaneous, and require no conscious act of judgment in their formation."

This statement gives a far more rational basis for the admission of such evidence than any we have seen. A sudden impression on the mind is like a blow on the body, and unless we admit such impressions as fact, little indeed of what we acquire by sense of sight, feeling, taste, touch or smell, really would be competent evidence.

CONSTITUTIONAL LAW — DISCRIMINATION AGAINST JEWS IN READING THE BIBLE IN PUBLIC SCHOOLS.—A very interesting review of the question of discrimination in the reading of the Bible in the public schools is that in Herold v. Parish Board of School Directors, 68 So. 116, decided by Louisiana Supreme Court.

In this case a Roman Catholic and a Jew complained that their religious rights were discriminated against in the reading of the Bible in the public schools. The court held that this was true so far as the Jew was concerned, but not true so far as the Roman Catholic was concerned, and the reading was prohibited.

The reasoning as to this distinction between the Catholic and the Jew proceeds on the theory that the Protestant version of the Old and New Testament of the Bible is objected to, the Jew rejecting the New Testament, but the answer of the board is, "that any Bible, Catholic or Protestant or Jewish or otherwise, may be read by the teachers" under the resolution of the board, and they deny that there was any "intention to resort to any sectarian practice" in the schools.

The court speaks of the various Catholic and other versions of the Bible, but conceding that the Catholic version comes within the resolution, it was objected by the Catholic plaintiff, that the Catholic child is taught that there should be no "reading of the Bible without authoritative comment from the head of his own church," and daily exercises in such reading "subjects him to a form of worship of which his parents do not approve."

To this the court says: "The Catholic child may or may not be prohibited from reading the Bible without such authoritative comment, but such prohibition would not be a doctrine of that church or creed. And in view of the very recent utterances of His Eminence, Cardinal Gibbons, one would not think that such prohibition can exist. That eminent man of God and high churchman, in a recent sermon, pointed to his own college days, when he says he carried a New Testament at all times and read one chapter every day." After making further observations along this line, it is said: "We cannot conclude that plaintiff, Marston, or his children would have their consciences violated by the reading of the Bible."

When it comes to the Jew, the court cites the Declaration of Independence, speaking of our "Creator," "the Supreme Judge of the world," and "our Lord," and oaths, concluding with "So help me God." It is said, in regard to reading the New and Old Testament, that: "with the Jew it is different. He denies that the New Testament is the word of God, and he denies our Savior. He does not deny most of the moral teachings of Jesus Christ, but he denies His divinity, and His resurrection." Therefore it is said a Bible, as containing the Old Testament and the New Testament is not his Bible and it is a denial of his religious rights that his child should be taught that it is.

It may be true that no court is called on to decide which of several versions of the Bible is correct, but, if teaching a Protestant child by reading the Catholic version seriously militates against belief in the religion of his parents, there is no occasion for a court to go into fine-spun reasoning about Constitutional rights. It is easy, if a court is so minded, to take away, by color of fair argument, a right that is sacred, and especially so, in a case where there is a question of influence in the instruction of immature minds. There seems something of lack of candor in the court's reasoning.

RECENT DECISIONS IN THE BRITISH COURTS.

With reference to the question whether, under the Workmen's Compensation Act, an accident arises out of and in course of a workman's employment, an interesting application has recently been made of the maxim so familiar in insurance law—*causa proxima non remota spectatur*. The principle was first noticed in connection with Compensation Law in Manson, 1913, S. C. 921. There a ship's carpenter working on the poop of a vessel lying in harbor was severely burned owing to some shavings by which he was surrounded being ignited by a match carelessly thrown down by a shore laborer. The carpenter's trousers happed to be saturated with inflammable oil which had leaked from a barrel he had shifted in the course of his work, and thus readily caught fire from the shavings. The court held that the man had been injured by an accident arising out of and in the course of his employment. Lord President Dunedin pointed out the fallacy of the employer's argument: "It was not the throwing down of the match that was the accident; the fire was the accident, but the throwing down of the match was the cause of the accident. It was through the accident namely the fire that the purser was injured. Well, I think that was a risk to which he was exposed to a greater extent than other people because of his employment. Other people were not exposed to the risks of that fire, because they had not to work on the poop among these shavings and to work in oily trousers."

Now in a recent case the rule thus indicated was formulated more precisely. An ironmonger's helper was working with a hammer beside boxes of molten metal. While doing so he was struck at random by a drunk man who had come into the work shop. The blow caused the helper to lose his balance and fall between the boxes of molten metal sustaining severe injuries. The court held that that was an accident arising out of and in course of the employment and awarded compensation. The judge who gave the leading opinion said: "One must distinguish between the *causa proxima* of the injuries and any antecedent cause of the accident. If the immediate cause of the injuries was an accident arising out of the employment, it is immaterial to investigate its prior cause or causes. Thus, in the present case, if the burns and bruises directly resulted from an accident, namely a fall which by the very nature of the workman's employment was attended by special risk and danger of such consequences, then the accident arose out of the employment, and the court need not and ought not to enquire whether the fall itself was caused by something not arising out of and indeed quite unconnected with the employment, namely the unwarrantable blow of an intoxicated stranger."

It might be thought that the well known phrase "on approval" could not admit of much doubt at this time of day, but in Berry & Co., Ltd., v. Star Brush Co., Ltd., 1915, 1 K. B. 77, the question of construction was by no means easy. Berry & Co. had asked the Star Brush Co. to supply them "on approval" with a particular machine which was to be obtained by them from Germany. Their letter contained the following conditions: "If we reject the machine within twenty-one days, we are to pay the carriage both ways . . . with a sum not exceeding 50/— for cleaning up the machine. If we retain the machine we are to pay for it and for the carriage from Germany." These conditions were accepted and the machine was sent. Berry & Co. rejected the machine within twenty-one days, and stated as their reason that though the machine itself was quite satisfactory, they anticipated that its use would cause trouble with their workmen. The Star Brush Company maintained that as the machine had been sent "on approval" it could only be rejected on some ground having relation to the machine itself. The court held that this was not merely a contract to supply goods on approval. There were conditions as to paying freight, etc., which showed that there was a right to reject for other reasons than defects in the goods themselves.

The Court of Appeal have now given judgment in the "Titanic" litigations and it will interest readers if we concisely state exactly what they have found. The cases arose out of the loss of the Titanic on a voyage from Queenstown to New York when she collided with an iceberg and sank. The jury before whom the cases were tried found that this casualty was the result of negligence on the part of the defendants' servants. The defendants relied on a condition on the back of the "Steerage Passengers' Contract Tickets" exempting the defendants from the consequences of neglect of default of the ship owners servants. This condition had not been approved by the board of trade. By sub-section 2 of section 320 of the Merchant Shipping Act, 1894, such a contract ticket is required to "be in a form approved by the Board of Trade and published in the London Gazette and any directions contained in that form of contract ticket not being inconsistent with this act shall be obeyed as if set forth in this sec-

tion." The form approved by the Board of Trade contained a "direction" that "a contract ticket shall not contain on the face thereof any condition, stipulation or exception not contained in this form." It was held by Vaughan Williams and Kennedy, L. J. J. (Buckley, L. J., dissenting) affirming the decision of Bailhache, J., that the condition, exempting from the consequences of negligence of the defendant's servants, not having been approved by the Board of Trade, was invalid and therefore the defendants were not entitled to the benefit of any such exemption.

DONALD MACKAY.

Glasgow, Scotland.

REFORM IN PROCEDURE IN ILLINOIS.

The State of Illinois possibly adheres more strictly to the common law forms of procedure than any other state in the union. The Illinois Bar Association, like that of many other states, has for a number of years endeavored to bring about a reform in procedure. Recent meetings of the Bar Association have been devoted solely to the discussion of this subject. Bills have been introduced in legislature, fathered by the Bar Association, but have never met with favorable results.

A great many of the lawyers, particularly the older practitioners, are wedded to the common law system, and it was with no little difficulty that the Illinois Bar Association was persuaded to take the initiative in this reform movement. After the Association prepared and approved bills and had them introduced in the legislature, they were opposed by a number of lawyers and judges throughout the state who used different arguments in opposition to their passage. Some of them contended that the common law system of pleadings was the most logical and scientific that had ever been devised to bring to an issue matters pending in courts for adjudication, and therefore no improvement would be gained by changing the method. They were willing for changes to be made so long as the common law method of pleadings was not disturbed. Others opposed them upon the grounds that the lawyers and judges had spent long years in familiarizing themselves with the common law system; the practice was well settled and understood, and by the adoption of a new method the lawyers would be compelled to begin anew on the procedure question and do their work over. They further contended that it would be a long time before the courts would have finally settled and definitely fixed the new method, whatever it might be, into a perfect system.

While the lawyers and judges have been somewhat divided upon the necessity of reform in this regard, the laity have been of uniform opinion that such reforms were necessary. They have been unable to see why a matter pending in a court could not be brought to an issue in that same business-like way that other business matters are transacted. Their experience as clients has taught them that a great deal of time is consumed in quibbling over immaterial matters. The fact that they have been unable to understand the manner in which issues are settled has calculated to bring about general dissatisfaction upon their part. This feeling of dissatisfaction has been confined largely to the better, or at least the most profitable, clientage of the lawyer. The successful business man feels that the delays in bringing questions pending in the courts to an issue and to trial are inexcusable.

There is no question but that the lawyers, in procedure and other matters connected with their profession, have not made the progress that has been made in the business world and in other professions; that there is room for improvement goes without saying. One of the reasons for lack of progress in the lawyer is that his work tends to make him over-conservative; he is inclined to look backward rather than forward. When a question is presented to him for solution he begins to scan the past

to see what has been done and said upon the subject. He looks for precedence and when venturing out on strange and new paths he goes slowly and with caution. The lawyers of Illinois have, nevertheless, made progress on this subject.

When the question was first considered by the Bar Association it had but few friends among the members. They were known as "reformers" and it was somewhat of a reflection to be classed among them. With the help of nearly all of the professors in the law schools they have steadily gained ground until now it is regarded as quite respectable to be considered a "reformer."

After this general sentiment for reform was brought about there arose the great question of how it was to be accomplished, and it was settled with no little difficulty. All agreed that amendments should be made that would eliminate useless technicalities and that liberal power should be given the supreme court to prescribe rules of procedure, but upon the question of practice a number of the lawyers wanted to retain the common law forms, use them as the frame-work, and bring about the reforms by way of amendments. Others realized that such a course would necessarily compel us to retain many of the technical questions that we were endeavoring to avoid and would not satisfy the people who are demanding that the lawyers devise some scheme that would simplify procedure and practice, bring about cheaper and more speedy litigation.

About this time we began to realize that the country from which we received the common law practice had abandoned it over forty years ago. It was thought that possibly the country that had devised the common law scheme of procedure to which some of our lawyers are so much wedded would throw some light upon the question of reform. We therefore began to study the English Judicature Act; the more we studied it the better we liked it, and were soon of the opinion that with slight changes, it could be made to fit our conditions. In the main it met the views for which a majority of our lawyers have been contending; that is, it contained only basic provisions with reference to procedure and practice and left the remainder to be supplied by rules of court. We therefore adopted it as the basis for the formation of bills to bring about the reforms desired and prepared and had introduced in both the House and Senate of the present General Assembly two bills—one with reference to law and the other with reference to equity procedure and practice. The law bill contained seventy-one sections and the equity bill fifty-one sections, including the repealing clauses. They, in the main, accomplish the following reforms:

They avoid unnecessary delays in this: they provide that the courts shall be always open; all processes are made returnable within twenty days, except in extraordinary cases, when the court may make them returnable sooner. The defendant is required to plead within twenty days, unless further time is obtained. The service of process is made easy and convenient.

Liberal provisions are made with reference to the joinder and misjoinder of parties and joinders of causes of action so that unnecessary delays will not be occasioned on this account, and a multiplicity of suits will be avoided.

All forms of action are abolished and the pleadings are a statement of claim by the plaintiff and a reply or answer by the defendant, with provisions for set-offs and counter-claims. New issues cannot be raised by the replication. It is intended the issue will be formed by the statement of claim, set-off or counter-claim and the replies thereto.

Liberal provisions are also made for interpleading.

They also make suitable provision for appeals and writs of error and lessen the cost of these proceedings.

They then provide that the supreme court shall make all necessary rules and prescribe forms to make these bills workable and carry into effect the reforms intended. They not only provide that the supreme court shall add to these measures, but that the provisions with reference to practice may be amended by the court.

We have not an opportunity here to call attention to all of the reforms that will be accomplished by these bills.

There is one reform that they do not accomplish. It is contemplated that the court will instruct the jury as to the law by a connected charge, but they do not positively provide that he shall do so. Our method of instruction is more calculated to confuse a jury than instruct them upon the law. It is folly to think that ordinary jurors, unskilled and untrained in the law, are capable of reconciling the apparent inconsistencies presented by our method of instructing juries. No doubt we will some day adopt a more rational and sane method, and juries will be instructed either orally or in writing by a connected charge.

These bills have been unanimously voted out by the committee to which they were referred, are now on second reading in the House, and have a fair prospect of passage, but what the final outcome will be it is impossible to foretell. We usually find about the same opposition in the legislature that we first encountered in the Bar Association. There is, however, one encouraging fact: we are constantly gaining recruits and we never lose any, so that if we fail now we will some day pass these or similar reform measures.

The following good reasons can be urged in favor of adopting the English Judicature Act:

1st. It accomplishes the reforms desired.

2d. It only undertakes to form basic rules by legislation and leaves the remainder to be accomplished by rules of court, thus entrusting the important matters in procedure and practice to a tribunal that is capable of handling them and is always open for action.

3d. The Act itself and the rules adopted under it have been construed by the English courts and we can have the benefit of such construction.

4th. It is quite desirable that there be uniform procedure and practice throughout the states of the union and the various states are more likely to unite upon this method than any other.

It is to be hoped that the American Bar Association, through its committee on Uniform State Laws, will take up the question of procedure and practice in the various states, and that it will be aided by the Bar Associations of the various states. Such a general movement will not only give us the reforms desired, but will furnish a uniformity in procedure and practice that will result in great good.

EDWARD C. KRAMER.

E. St. Louis, Ill.

COUNTIES—DEFECTIVE ROADS.

SNETHEN v. HARRISON COUNTY, et al.

Supreme Court of Iowa. April 8, 1915.

152 N. W. 12.

Acts 35th Gen. Assem. c. 122, authorizing and requiring counties to establish county roads, and requiring them to construct such roads and erect the necessary bridges and culverts, does not impose upon a county liability for injury caused by negligence in the performance of those duties.

DEEMER, C. J. Plaintiff claims that a defect existed in one of the highways of defendant county, over which its board of supervisors had assumed jurisdiction under the new road law, as a part of the county road system; that this defect consisted in the washing out of a fill in a ravine, which was crossed by the highway, which washout the defendant county was attempting to obviate by the establishment of a new highway. This new highway was acquired by consent, and, as it crossed the ravine hitherto mentioned, it was necessary to construct a bridge over it. The county entered

upon the new highway, and proceeded to grade the same by day labor, and to construct a temporary bridge over the ravine.

Plaintiff alleged that the defendants, and each of them, carelessly and n gligently improved and constructed that portion of the said county road so that there was nothing on the surface of the ground between the said sharp curve and the banks of the said ditch to indicate to the traveler that he had left the road and was on the ground between the road and said ditch; that defendants negligently constructed the said road up to within 20 feet of the bank of said ditch, and then caused the same to turn sharply to the south and run along the bank of said ditch to the said temporary bridge, and, after crossing the said bridge, to run along the opposite bank of said ditch in a northerly direction, when a sharp curve was again made directly opposite the point where the aforementioned sharp curve was made; that the said defendants, and each of them, negligently and carelessly opened the said road for travel before the completion of a permanent bridge across the said ditch; that the said defendants, and each of them, negligently constructed the said bridge off of and to the south of the said road, at a point about ——— feet to the south thereof; that the said defendants, and each of them, negligently failed and refused to construct any obstruction at said curve to prevent travelers running off of said road and into said ditch; that they negligently failed and refused to construct any guard or signal to indicate to travelers along said road the position of the said ditch, the location of the said temporary bridge, or the dangerous condition of the said road; that the said defendants, and each of them, negligently failed to erect any guards along the banks of said ditch and between the road and the said ditch.

Plaintiff further alleges that long prior to the 16th day of August, 1913, the abovenamed individual defendants, and each of them, were orally warned, as aforesaid, that, unless some obstruction, guard, or signal was erected in said road at said point, there was a likelihood of travelers along the said road being precipitated into said ditch and being either injured or killed, but that, notwithstanding the said warning, the said defendants, and each of them, negligently failed and refused to provide any obstruction, guard, or signal whatsoever for the protection of travelers along said road, as aforesaid, and negligently failed and refused to provide any obstruction or warning of any character to indicate the location of said ditch or of said temporary bridge; that no written notice of the dangerous condition of the said road, as aforesaid, was given to any of the above-named defendants.

[1, 2] It is further alleged that plaintiff's intestate, who was in an automobile driven by one Clifford Townsend, was injured and afterward died as a result of the driver's running his machine into the said open ditch without any fault or negligence on his part. The demurrer challenges the liability of the county under this state of facts, and it is frankly conceded that, unless our new road law imposes liability upon the county either expressly or by fair implication, there can be no recovery. Counties, unlike cities and incorporated towns, are not, as a rule, held liable for torts committed by them, so long as they are acting within the scope of their governmental powers. They are quasi municipal corporations engaged in the performance of governmental functions, and are not responsible for the neglect of duties enjoined upon them, in the absence of statute giving a right of action. Kincaid v. Hardin County, 53 Iowa, 430, 5 N. W. 589, 36 Am. Rep. 236; Wilson v. Jefferson County, 13 Iowa, 181; Wilson v. Wapello County, 129 Iowa, 84, 105 N. W. 363, 6 Ann. Cas. 958; Green v. Harrison County, 61 Iowa, 311, 16 N. W. 136; Packard v. Voltz, 94 Iowa, 279, 62 N. W. 757, 58 Am. St. Rep. 396; Wenck v. Carroll County, 140 Iowa, 558, 118 N. W. 900; Wood v. Boone County, 153 Iowa, 92, 133 N. W. 377, 39 L. R. A. (N. S.) 168, Ann. Cas. 1913D, 1070; Soper v. Henry County, 26 Iowa, 264.

In the last-cited case, Judge Dillon, speaking for the court, said:

"Counties are involuntary political or civil divisions of the state, created by general statutes, to aid in the administration of government. They are essentially public in their character and purposes. They are simply governmental auxiliaries, created bodies corporate for 'civil political purposes only.' Rev. § 221. To the statute they owe their creation, and the statute confers upon them all the powers * * * they possess, prescribes all the duties * * * they owe, and imposes all the liabilities to which they are subject. To enable them better to exercise their powers and discharge their duties, our statute clothes them with corporate capacity. Considered with respect to their powers, duties, and liabilities, they stand low down in the scale or grade of corporate existence. It is for this reason that they are ranked among what have been styled quasi corporations. This designation is employed to distinguish them from private corporations aggregate, and from municipal corporations proper, such as cities, acting under

general or special charters, more amply endowed with corporate life and functions, conferred in general at the request of the inhabitants of the municipality for their peculiar and special advantage and convenience. The decisions of the courts in every state of the Union, recognizing this distinction, hold incorporated cities and towns to a much more extended liability than they do counties, school and road districts, even where the latter are declared to be invested with corporate capacity. Thus, incorporated cities and towns, wherever they are invested by their organic or constituent acts with general supervision and control over their streets, with power to grade and to improve them, and with the power to levy taxes or raise revenue, which may be used for the purposes of such repair, are held liable, without any statute expressly giving the action, for injuries caused by unsafe and defective streets. * * * (Citing authority.) On the other hand, the decisions are almost (though not wholly) uniform to the effect that counties and other quasi corporations are not liable to private actions for the neglect of their officers in respect to highways, unless the statute has in so many words created the liability, specially giving the action to the party injured. (Citing authority.) * * * The opinion of the court is that the court below rightly held that the county was not liable to the plaintiff in respect of the injury for which his action was brought. If the county ought to be liable in such a case, the remedy must be sought from the Legislature."

It is needless to quote from the other cases, although it may be said that Packard v. Voltz, supra, is so nearly like this one in its facts, that the principle announced must govern here.

The new road law (chapter 122 of the Acts of the 35th G. A.) authorizes and requires counties to establish county roads, and requires them to construct these roads and to erect the necessary bridges and culverts according to approved plans.

The defendant county was in the exercise of its powers upon the road in question, and it must be assumed that its board or employes, or both, were extremely negligent in leaving the dangerous place in the road. But they had not constructed a bridge at the point of the accident, so plaintiff's intestate was not injured by reason of a defective bridge. True, the board was bound to construct a bridge at the place where the accident occurred, and was given a fund with which to do it and to keep the structure in repair. It was also authorized to construct the road and doubtless to keep it in repair. But there is nothing in the statute anywhere which indicates any intention on the part of the legislature to impose any liability upon the county for negligence on its part in the doing of its work.

Appellant contends, however, that the county should be held liable on the same theory that it is responsible for the construction, maintenance, and repair of county bridges; and it must be confessed that the analogy is quite close. But this court, in adopting the rule of liability for defective bridges, did not follow the general rule then existing in other jurisdictions, and has since its adoption persistently and consistently refused to enlarge the same. See cases hitherto cited. It has refused to apply it to county jails and courthouses, to ditches and drains constructed by legislative authority, and to the care of paupers and insane; and it may well be affirmed that county bridges constitute the only exception in this state to the rule of nonliability.

[3] II. It is insisted, however, that the individual members of the board of supervisors, who were actively engaged in the work, are liable personally. As they were engaged in a public work in virtue of their office, the rule of nonliability applies to them, as well as to the body for which they were acting. Packard v. Voltz, 94 Iowa, 279, 62 N. W. 757, 58 Am. St. Rep. 396; Wood v. Boone County, 153 Iowa 92, 133 N. W. 377, 39 L. R. A. (N. S.) 168, Ann. Cas. 1913D, 1070. Upon this proposition, there is a lack of uniformity in the decisions of the various courts of this country; but, after a careful examination of the underlying principles which should govern, this court has held that the agents who perform the governmental functions are no more responsible than the artificial body—the corporation for which they acted. We see no reason for departing from any of these established rules.

The trial court was right in sustaining the demurrer, and its judgment is affirmed.

EVANS, PRESTON, and SALINGER, JJ., concur.

NOTE.—*Individual Liability of Contractors for Negligent Construction of Highway.*—The instant case admits there is some conflict of authority upon the question whether there is individual liability of those who act for a county, constructing a highway, though the county itself be not liable. Thus it has been held that where one contracts with a county to keep its roads in repair and failure to keep his contract constitutes a misdemeanor, he becomes liable to an individual injured by defective condition of the road. Wade v. Gray, 104 Miss. 151, 61 So. 168, 43 L. R. A. (N. S.) 1046.

The court distinguished the ruling in Redditt v. Wall, Miss., , 55 So. 45, 34 L. R. A. (N. S.) 152, where a contractor giving bond was held not liable on such bond as an individual,

because the bond was for the exclusive benefit of the county, not in itself liable to such individual. But it is said the court has never decided that the contractor might not be personally liable in tort. In the Wade case this personal liability was declared, and after generally declaring such liability, it was further pointed out that there was a criminal liability attached to the contractor's default, but this is not specially stressed as the ground of personal liability. It was said: "He also owed to the public a general duty to keep the roads in general repair."

In Solberg v. Schlosser, 20 N. D. 307, 127 N. W. 91, 30 L. R. A. (N. S.) 1111, it was held that one contracting with a drainage board in such a way that a drain to be constructed would not render a highway dangerous is liable for defects injuring a traveler on the highway. It was said in this case that defendant was an independent contractor and there being no relation of principal and agent, defendant was liable in tort for his acts. It was defendant's duty to restore the highway where his acts made it dangerous, Evansville & T. H. R. Co. v. Crist, 116 Ind. 446, 19 N. E. 310, 2 L. R. A. 450, 9 Am. St. Rep. 865, being cited in support of this principle. But this does not seem to hold that the contractor was liable except for his putting obstructions on a highway in the course of doing other work.

The instant case speaks of there being some conflict as to this question, but we have been able to find only the two cases above decided, and they do not appear to be really opposed.

As to liability of a county, only in Maryland have we found any cases holding to liability, and they plant themselves upon the peculiarity of statutes. Anne Arundel County v. Carr, 111 Md. 141; Richardson v. Commrs., etc., 120 Md. 153, 87 Atl. 747.

In Oklahoma it is said the rule as to counties governs as to townships. June v. Wellston Tp., 18 Okl. 56, 90 Pac. 100, 13 L. R. A. (N. S.) 1219, 11 Ann. Cas. 938.

We think it may be said that virtually there is no conflict of view to the several propositions the instant case declares, unless a statute specifically imposes liability. C.

JETSAM AND FLOTSAM.

FROM THE OUTSIDE OF THE REPORTS.

(By Gladys Judd Day, Librarian, Hartford Bar Library, Hartford, Conn.)

What's in a name?

Bumgardner v. Scaggs, 180 Ill App. 668.

Poor Fido!

Boots v. Canine, 94 Ind. 408.

A case for St. Peter.

Angel v. Methodist Protestant Church, 62 N. Y. Sup. 410.

Something doing!

Kueck v. Boost, 145 Ill. App. 411.

Out of the frying pan into the fire.

Cook v. Hell, 175 Ill. App. 532.

Where was the Pied Piper?

Ratts v. Ratts, 11 Ill. App. 366.

A fashionable dispute!

Gladfelt v. Bonnet, 24 Ill. App. 533.

A case for the neutrality commission.

Battle v. Shute, 37 Head. 547 (Tenn.).

Dishabille!

Panton v. Collar, 12 Ill. App. 160.

Assigned for Friday.

Cook v. Mackrell, 70 Pa. St. 12.

A sharp contest.

Razor v. Razor, 42 Ill. App. 504.

Why not kiss and make up?

Dikis v. Likis, 65 So. 398 (Ala.).

Money talks.

Cash v. Cash, 180 Ill. App. 31.

Cracked!

Nut v. Knutt, 200 U. S. 12.

In bad!

Boggs v. Sinking Fund Commissioners, 10 N. J. L. J. 219.

This case should be waived.

Beach v. Wade, 3 Wkly. Notes Cas. 219.

A case for the sexton.

Bone v. Graves, 43 Ga. 312.

Some blow!

Breeze v. Sails, 23 N. C. R. 94.

ITEMS OF PROFESSIONAL INTEREST.

THE STORY OF THE ILLINOIS STATE BAR ASSOCIATION.

The Illinois State Bar Association was organized January 4, 1877, at Springfield, Illinois, where a number of representative lawyers of Illinois from different parts of the state met during the session of the general assembly, and believing that the lawyers of the state ought to be organized in order to accomplish some things that seemed necessary for the general welfare.

The object of the association, as stated in its constitution, is "To cultivate the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standard of integrity, honor and courtesy in the legal profession, to encourage a thorough and liberal legal education and to cultivate and cherish a spirit of brotherhood among the members thereof." The object of the association is not selfish in any pecuniary sense. It is in the largest sense for the public welfare.

The association holds two day meetings annually and alternates these meetings between the city of Chicago and some city in Illinois outside of Chicago. In some years semi-annual one-day meetings are held when some subject of special interest to the legal profession seems to warrant discussion and action.

The association has grown in numbers until it now has a membership of about 2,000 and is the second largest state bar association in the United States. Its membership is composed of the leading lawyers of the state and every city in the state has representatives on its roll of members.

The association has been active for more than thirty-eight years in the discussion of questions that are of interest to the profession as well as of public interest. Justice is properly regarded, as Webster once said, as "the greatest interest of man on earth," and it is in the promotion of justice that the association is concerned. It has been active in preparing and recommending legislation which looks to the advancement of justice, the simplification of the processes of the law and to make justice both certain and speedy. It was active in securing the enactment of amendments to the practice act, which have cut away many of the technicalities of the law and its officers and proper committees are now engaged in endeavoring to secure still greater simplification of procedure in the trial of cases, both in law and equity.

Many notable men have been guests of the association from year to year, who have spoken upon questions of particular interest to the profession. Its work is largely done through committees that are appointed from year to year that deal with such subjects as Law Reform, Judicial Administration, Legal Education, Uniform State Laws, Grievances Against Lawyers, Admissions to the Bar, Professional Ethics, and similar subjects, and special committees are appointed to investigate and report on special subjects that peculiarly require the attention of lawyers.

County bar associations in various counties of the state are affiliated with the state association, and in addition the state of Illinois is divided into seven supreme court judicial districts, each of which maintains a district association which is affiliated with the state organization. In this way the needs of the various counties in the districts are brought to the attention of the state association and the recommendations of the state association find a convenient means of reaching the lawyers throughout the state.

The president of the association for this year is Hon. Edward C. Kramer, of East St. Louis, Ill., whose photo adorns our front cover page. Mr. Kramer was born in Wabash County, Illinois, February 1, 1857; admitted to practice law by the Supreme Court of Illinois February, 1882; practiced from that time up until 1898 at Fairfield in Wayne County, Illinois. For the last past seventeen years has practiced law at East St. Louis, St. Clair County, Illinois, during all of which time he has been actively engaged in the general practice of the law. Is now the senior member of the firm of Kramer, Kramer & Campbell at East St. Louis, which firm represents a number of corporations.

He is a member of the American Bar Association. He has taken an active part in the proceedings of the Illinois Bar Association, particularly in the reform of procedure and practice, and a short article on that subject over his own signature appears in this issue of the Central Law Journal.

The next annual meeting of the association will occur at Quincy, Illinois, on Friday and Saturday, June 11th and 12th, 1915. The general subject for discussion at the meeting will be "Constitutional Revision." Delegates from county bar associations all over the state will be in attendance and speak for their associations, thereby bringing together the views of the leading lawyers of Illinois from Galena to Cairo on this important subjest.

Hon. E. C. Kramer will deliver the annual address. His subject will be concerning a new constitution for Illinois. Honorable Lawrence Y. Sherman and James Hamilton Lewis have accepted invitations to attend the meeting and take part in the program.

It has been many years since the lawyers of Illinois met in the western part of the state, and Mr. John F. Voigt, secretary of the association, announces that the Adams County Bar Association is making elaborate arrangements for the entertainment of the visitors. A boat ride on the Mississippi River and an automobile ride along the beautiful bluffs of the river are to be some of the methods of entertainment. The meeting will close with a banquet on Saturday night, at which prominent lawyers of the state will speak.

A. H. ROBBINS.

JOINT MEETING OF THE WASHINGTON AND OREGON BAR ASSOCIATIONS.

A joint convention of the Washington and Oregon Bar Associations will be held in Portland, Oregon, August 23, 24 and 25, 1915. Addresses will be made by Judge William Howard Taft, ex-Senator George Turner, of Spokane, and Senator George E. Chamberlain, of Oregon. Extensive preparations are under way for the entertainment of all jurists and lawyers visiting the Northwest and the Fair. An invitation is cordially extended to the American and Ca-

nadian bench and bar to attend. Hotel accommodations will be arranged upon request to Mr. A. B. Ridgway, secretary of the Oregon Bar Association, Northwestern Bank Building, Portland, Oregon. The program includes an auto trip along the new Columbia Highway.

MEETING OF THE OHIO STATE BAR ASSOCIATION.

The Executive Committee of the Ohio State Bar Association has fixed July 6th, 7th, and 8th, as the dates, and Cedar Point as the place for the holding of the thirty-sixth annual meeting of the association.

Addresses will be delivered by Honorable J. B. Foraker, of Cincinnati, Professor Roscoe Pound, of Harvard Law School, and Judge C. W. Dustin, of Dayton.

CORRESPONDENCE

RECENT REFORMS IN FEDERAL PROCEDURE.

To the Editor, Central Law Journal:

Your readers will be glad to know that two of the law reform bills which were recommended by the American Bar Association, have passed both Houses of Congress and become law.

The first gives the Supreme Court power to grant a writ of certiorari to review a judgment rendered by the highest court of a state that a statute of the state is repugnant to the Constitution, treaties, or laws of the United States. Until the passage of this act such a decision could only be reviewed in the Supreme Court when it was in favor of the validity of the state statute or authority. Had this new law been in force at the time of the decision of the New York Court of Appeals in the Ives case, (201 N. Y. 271), that the Wainwright Compensation Act was in violation of the Constitution, that case could have been carried directly to Washington and we should have been spared the somewhat absurd condition growing out of the conflict in the decision between the Court of Appeals of New York and the Supreme Courts of New Jersey and Massachusetts.

The other bill referred to directs the Federal Courts in case it finds that a suit at law should have been brought in equity, or a suit in equity should have been brought at law, to order any amendments to the pleadings which may be necessary to conform them to the proper practice. The right to amend at any stage of the case so as to obviate the objection that the suit was not brought on the right side of the court is absolute. All testimony taken before such amendment, if preserved, stands as testimony in the cause. It is also provided that in actions at law in the Federal courts equitable defenses may be interposed without the necessity of filing a bill on the equity side of the court. Equitable relief respecting the subject-matter of the suit may thus be obtained by answer or plea. The court is to regulate the review of the judgment and the "Appellate Court shall have full power to render such judgment upon the record as law and justice shall require." The Act also provides that defective allegations of jurisdiction may be supplied and amended at any stage of the cause. So that hereafter there will be no reversals on the ground of defective allegations of jurisdiction.

The Bar Association has been pressing these bills for several years. They have had the cordial support of many members of Congress.

EVERETT P. WHEELER,

New York.

Chairman Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation—American Bar Association.

BOOK REVIEW

BECK'S THE EVIDENCE IN THE CASE.

Mr. James M. Beck, late U. S. Assistant Attorney-General, has produced a revised edition of The Evidence in the case, being a Discussion of the Moral Responsibility for the War of 1914, as Disclosed by the Diplomatic Records of England, Germany, Russia, France and Belgium, the book being dedicated to Albert of Belgium, "Every Inch a King."

To this book there is an introduction by the Hon. Joseph H. Choate, former American Ambassador to Great Britain. This introduction may be thought to indorse quite fully the view or views taken in the book, in which the conviction that the moral responsibility for the war rests on Germany is expressed.

Mr. Beck is one of the noted lawyers of this country, but it is to be gravely doubted whether he is not going very much counter to the President's advice in regard to neutrality, as also Mr. Choate in indorsing his book. He appears to have endeavored to present himself in judicial frame of mind in passing on the question he proposes to his mind, but his writing greatly resembles a special plea, in which his inclination is greatly against Germany. He very vigorously condemns, not the German people,

but the policy which he calls that of "blood and iron," alleged to prevail among "a group of distinguished German soldiers, professors, statesmen and even doctors of divinity, pretending to speak in behalf of the German nation." He thinks that some of them are "like Machiavelli, detestable but, unlike Machiavelli ridiculous." He calls this ruling class "Junkers," and thinks the German people no more responsible for what they say, than England for the three tailors of Tooley street, but to this "ruling caste the German people have committed their destiny," and he admits that the latter are supporting the former in a wonderful way.

Mr. Beck's principal contention is that Germany is responsible for the Austrian ultimatum to Servia; that she knew what it would be before it was sent, and the failure of the German White Paper to include the communications passing between Berlin and Vienna amounts to a suppression of evidence.

This is a serious charge and Mr. Beck endeavors to fortify his conclusion from the official documents of the countries, and especially by the silence of Italy and the late appearance of the Austrian Red Book failing to show a single document sent to or from Germany from July 6th to July 21st, when, Mr. Beck asserts, "the great coup was secretly planned by Berlin and Vienna."

Mr. Beck is both a literary and a forceful writer, but as Mr. Choate says, in his introduction, "he proceeds con amore to demonstrate the truth of his conviction by the most earnest and forceful presentation of the case." The book is well worth reading, but it should be regarded not as an impartial presentation of the case. He thinks Germany, or the "caste" speaking for it, capable of any misrepresentation and deceit, and what he says should be taken with a grain of allowance.

The book is in octavo form, of good type and paper, of over 250 pages, and is published by G. P. Putnam's Sons, New York and London, 1915.

BOOKS RECEIVED

The Evidence in the Case. A Discussion of the Moral Responsibility for the War of 1914, as Disclosed by the Diplomatic Records of England, Germany, Russia, France and Belgium. By James M. Beck, LL.D., late Assistant Attorney-General of the United States. With an Introduction by Hon. Joseph H. Choate, late U. S. Ambassador to Great Britain. Revised edition, with additonal material. Price, $1.00. G. P. Putnam's Sons. New York and London. The Knickerbocker Press. 1915. Review in this issue.

HUMOR OF THE LAW.

"Can I interest you in an attachment for your typewriter?" asked the agent, as he entered the office.

"No chance," replied Mr. Grouch. "I am still paying alimony on the strength of the attachment I had for my last typewriter."—Cincinnati Enquirer.

The following characterization by Justice Holmes, of the United States Supreme Court, of the technical construction of indictments in favor of the accused is worth preservation. He speaks of it as "the inability of the seventeenth century common law to understand or accept a pleading that did not exclude every misinterpretation capable of occurring to intelligence fired with a desire to pervert." Paralso v. United States, 28 Supreme Court Reporter, 127.—The Docket.

The story goes that Mr. Taft, in his younger days when he was a law reporter, had been studying a case in Somerville, Ohio, and found he couldn't get back to the office that night unless he managed to stop a through express. So he wired to headquarters, "Will you stop the through express at Somerville to take on large party?"

The answer came back, "Yes."

The express was duly stopped at Somerville. The young law reporter got aboard with his copy, and the conductor said:

"Where's that large party I was to take on?"

"I'm him," was the grinning answer. "That's all."—Law Student's Helper.

Some time ago, according to S. L. Richey, in "The Docket," "a suit was filed in the district court here by four heirs against four other heirs for their interest in the estate of their father. I was employed to represent the defense.

"During the pendency of the suit one of the attorneys for the plaintiffs informed me of the death of one of his clients, and asked me if I had any objection to the case being continued until he could wind up the decedent's succession and make his heirs parties to the suit. I told him that I had no objection, and he arose, in open court, and began as follows:

" 'May it please the court, by agreement of counsel for both sides of this case, one of the plaintiffs has died since the filing of this suit—'

"At this juncture I interrupted him, and informed him that either he or myself misunderstood the agreement. You can imagine the result."

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Acknowledgment**—Validity of Instrument.—Where an instrument is valid without an acknowledgment, it will stand, notwithstanding the absence of jurisdiction in the officer taking the acknowledgment or fraud or duress in connection with it.—Butler v. Hill, Ala., 67 So. 260.

2. **Adverse Possession**—Permissive Possession.—Where a railroad was constructed on land belonging to those who controlled and directed it, the possession of the railroad was not adverse, and could not ripen into title.—Illinois Cent. R. Co. v. Taylor, Ky., 175 S. W. 26.

3.——Statute of Limitations.—The doctrine of adverse possession does not apply to municipalities or other bodies exercising governmental functions, and limitations will not run against their rights in a public alley.—Schultz v. Stringer, Iowa, 150 N. W. 1063.

4. **Alteration of Instruments**—Release.—An alteration of a stock subscription contract with respect to the number of shares and amount of capital stock subscribed for, releases the subscribers.—Bohn v. Burton-Lingo Co., Tex., 175 S. W. 173.

5. **Attorney and Client**—Contempt.—Language in the appellants' brief implying that the court seeks new plausible ways for the destruction of rights, etc., held highly reprehensible, and to be visited by denial of costs both for printing the brief and for attorney's fees; the briefs being stricken from the files.—Casper v. Kalt-Zimmers Mfg. Co., Wis., 150 N. W. 1101.

6.——Disbarment.—Any inherent power of the appellate court as to disbarring and reinstating any attorney is as to practice in such court, and does not include original jurisdiction to restore to right of practice in another court an attorney disbarred by such court.—In re Talbott, Ind., 108 N. E. 240.

7.——Lien.—An attorney's lien on a judgment for tort is not inferior to a set-off by an assignee of the judgment debtor of a claim against the judgment creditor growing out of contract.—Kansas City Rapid Motor & Transp. Co. v. Young, Mo., 175 S. W. 95.

8. **Bailment**—Estoppel.—A party agreeing to hold without storage charges pianos of the adverse party, and to account for such as were sold by him, held not estopped from denying liability for loss of pianos by fire.—Waltham Piano Co. v. Lindholm Furniture Co., Iowa, 150 N. W. 1040.

9.——Notice to Remove.—Where the buyer agreed that the seller could store the ties in a boom for an indefinite time, the seller was entitled to a reasonable time to remove its ties, after notice of termination of the contract, before it could be charged for storage.—American Tie & Timber Co. v. Naylor Lumber Co., Ala., 67 So. 246.

10. **Bankruptcy**—Notice.—In an action against a physician for malpractice, an averment in defendant's answer of actual notice to plaintiff of the pendency of bankruptcy proceedings against defendant and discharge thereunder, held under Bankruptcy Act, § 17, to aver notice sufficiently to withstand a demurrer.—Reinhardt v. Freiderich, Ind., 108 N. E. 285.

11.——Preference.—A preference by a firm to a firm creditor cannot be recovered by the trustee in bankruptcy of the continuing partner, the right to recover being a right of the creditors of the firm, and not a right of the firm to which the continuing partner succeeds.—Rubenstein v. Lottow, Mass., 107 N. E. 718.

12.——Surety.—The remedy of the surety on supersedeas bond of appellants becoming bankrupt after judgment must be sought in the bankruptcy court.—Vandiver v. American Can Co., Ala., 67 So. 299.

13. **Banks and Banking**—Imputable Notice.—Knowledge of the president of a bank that a note given by defendant was a mere accommodation note for the president's own debt due the bank is not imputable to the bank so as to operate as a defense.—Hawkins v. First Nat. Bank of Canyon, Texas, Tex., 175 S. W. 163.

14.——Recovery of Payment.—A bank on which a check is drawn, having paid it, cannot recover the payment, in the absence of fraud, because the drawer did not have sufficient funds on deposit.—Bellevue Bank of Allen Kimberly & Co. v. Security Nat. Bank of Sioux City, Iowa, 150 N. W. 1076.

15. **Bills and Notes**—Accommodation, Indorser.—Between an accommodation indorser and a person accommodated there is no liability, whatever their apparent relation on the paper, although as to third parties the rights and liabilities of the indorser are those of a party receiving consideration.—Conners Bros. Co. v. Sullivan, Mass., 108 N. E. 503.

16.——Accommodation Maker.—Under Negotiable Instruments Act, §§ 119, 120, an accommodation maker is not released by an extension of time for payment granted without his knowledge to the principal maker.—First State Bank of Nortonville v. Williams, Ky., 175 S. W. 10.

17.——Indorsers.—Under Negotiable Instruments Act, § 68, the liability of all stockholders of a corporation indorsing a note of the corporation held unaffected by the order in which they indorsed the note.—Trego v. Cunningham's Estate, Ill., 108 N. E. 350.

18.——Notice.—Under Negotiable Instruments Act, an indorsee of a note who took it with knowledge of the payee's agreement to renew it at maturity is bound by that agreement.—Farmers' & Traders' Bank v. Laird, Mo., 175 S. W. 116.

19. **Brokers**—Compensation.— One employed by another to find a third party who will make a certain loan to him, who finds such party able, willing, and ready to make the loan, may recover the compensation agreed upon.—Bartlett v. Garrett, Mo., 175 S. W. 79.

20. **Carriers of Goods**—Demurrage.—A carrier is not entitled to payment of freight or demurrage for a shipment consigned to a private track until it is delivered on that track.—New York, N. H. & H. R. R. Co. v. Porter, Mass., 108 N. E. 499.

21. **Carriers of Live Stock**—Delay.—Where the evidence showed that the delivering carrier was only slightly responsible for the delay, and not at all for the want of proper attention to the shipment, in consequence of which the animals were delivered in bad condition, it was not liable.—Duvall v. Louisana Western R. Co., La., 67 So. 354.

22. **Carriers of Passengers**—Burden of Proof. —In an action for the death of a street car passenger from injuries due to a violent stop of the car, plaintiff must prove the stop and that it directly resulted in the injury, but need not prove what negligent act produced the stop.—Allen v. Dunham, Mo., 175 S. W. 135.

23.——Contributory Negligence.—It is not contributory negligence, as a matter of law, for a passenger on a crowded street car to ride on the steps.—Mobile Light & R. Co. v. Hughes, Ala., 67 So. 278.

24.——Degree of Care.—When a street car company permits passengers to ride on the steps and platform of its vehicles, it must exercise care proportionate to the risk occasioned by the overcrowding.—Mobile Light & R. Co. v. Hughes, Ala., 67 So. 278.

25. **Charities**—Residuary Bequest.—A residuary bequest to a designated anti-saloon league, held not sustainable as a gift to charity, since the object of the gift was uncertain, and there was no trustee appointed, with power to render the object certain.—Volunteers of America v. Pierce, Ill., 108 N. E. 318.

26. **Constitutional Law** — Administrative Board.—The legislature may confer upon an administrative board or official the duty to determine whether conditions exist upon which an exemption from Laws 1913, c. 740, §8a, giving laborers in factories and mercantile establishments one day of rest in seven, is based.—People v. Klinck Packing Co., N. Y., 108 N. E. 278.

27.——Due Process of Law.—Local Improvement Act, §§ 57, 58, as amended by Laws 1913, p. 166, authorizing local improvement boards to make a new assessment and levy after the completion of an improvement, the assessment for which has been declared invalid, held as to owners liable to assessments, not a taking of property without "due process of law."—City of Lincoln v. Harts, Ill., 107 N. E. 725.

28.——Interest in Suit.—A citizen of Missouri, who has never been domiciled in Louisiana, has no interest entitling him to question the constitutionality of Act No. 156 of 1912, permitting pauper citizens of Louisiana to sue without previously paying or securing costs.—White v. Walker, La., 67 So. 332.

29.——Police Power.—The state may delegate the police power to local municipalities as it may deem for the best interests of the public, and may resume such power again when deemed expedient.—Sanitary Dist. of Chicago v. Chicago & A. R. Co., Ill., 108 N. E. 312.

30. **Contempt**—Constructive.—An alleged contempt, consisting in altering a motion for a continuance after it was overruled, held constructive, requiring proceedings thereon to be based on an affidavit or order to show cause setting out the specific facts constituting the contempt. —Grace v. State, Miss., 67 So. 212.

31. **Contracts**—Warranties.—Mere representation of value of an advertising contract to defendant, made to induce him to make the same, held no defense in the absence of an averment that they were intended as warranties or made with intent to deceive and defraud.—Mertins v. Hubbell Pub. Co., Ala., 67 So. 275.

32. **Corporations**—Action.—Where a contract to repurchase certain corporate stock assigned to plaintiff as collateral authorized him to sue to enforce such repurchase agreement, plaintiff could continue the suit after payment of its principal debt, under Gen. St. 1913, § 7674.—First National Bank of Hastings v. Corporation Securities Co., Minn., 150 N. W. 1084.

33.——Promoter.—Promoter of Massachusetts corporation, who controlled it and appropriated an increase of its shares without consideration, held to have committed a fraud on it and its stockholders, so as to entitle them to relief.—Keith v. Radway, Mass., 108 N. E. 498.

34.——Subscription.—A person induced by fraud to become a subscriber to corporate stock is relieved from liability to corporate creditors, where he repudiates his subscription promptly and before the rights of the creditors have intervened.—Bohn v. Burton-Lingo Co., Tex., 175 S. W. 173.

35. **Counties**—Inheritance Tax.—Where a county treasurer sought to retain, out of inheritance taxes collected, commissions not authorized by law, a taxpayer who had paid no part of such taxes may sue to restrain the treasurer.—Jones v. O'Connell, Ill., 107 N. E. 731.

36. **Criminal Evidence**—Prejudice.—Where accused did not put in issue his reputation for peace and quiet, argument by the state that, had he done so, it could have been shown that it was bad, was prejudicial.—Marshall v. State, Tex., 175 S. W. 154.

37. **Criminal Law**—Evidence.—The coat and gun worn by deceased at the time of the killing, having been introduced in evidence, should not have been permitted to be taken to the jury room during deliberation.—State v. Wooten, La., 67 So. 366.

38. **Damages**—Abandonment.—Where a contractor fails to prosecute the work as required and abandons it, he is liable for the additional cost of completing the contract.—Board of Com'rs of Plaquemines Parish, East Bank Levee Dist., v. Dowdle & Windett, La., 67 So. 324.

39.——Liquidated.—Liquidated damages are recoverable only where the party has suffered more than nominal damages.—Jackson County Light, Heat & Power Co. v. City of Independence, Mo., 175 S. W. 86.

40. **Death**—Action.—In an action against street railway for death of plaintiff's husband, the fact that such person had retired from active business held not to preclude plaintiff from recovering damages for loss of earning capacity. —Loomis v. Metropolitan St. Ry. Co., Mo., 175 S. W. 143.

41. **Deeds**—Estate Tail.—A deed to a man and his children, he being childless at the time the devise or conveyance takes effect, passes an estate tail, converted by statute into an unqualified fee.—Dallas Compress Co. v. Smith, Ala., 67 So. 289.

42. **Divorce**—Practice.—A wife who has obtained a final judgment of separation, assigning her custody of a child, cannot thereafter proceed by rule in the separation suit for alimony for the child; her remedy being by separate action.—Hardy v. Collins, La., 67 So. 333.

43.——Resulting Trust.—A husband, against whom his wife has obtained a divorce which made no disposition of the property, cannot complain of the disposition by the wife of property in which she had a resulting trust, and which was conveyed to her after the divorce.—Cooper v. Olson, Iowa, 159 N. W. 1028.

44. **Dower**—Inchoate Right.—Where a wife is not joined in suits to foreclose mortgages on her husband's lands, decrees of foreclosure do not affect her inchoate right of dower subject to incumbrances existing when the husband acquired title.—Bigoness v. Hibbard, Ill., 108 N. E. 294.

45. **Drains**—Assessment Tax.—A special assessment tax generally need not be extended by the county clerk on the collector's books, the

same as other taxes necessary for state, county, and municipal purposes, as such provision is found in Farm Drainage Act, § 70, and relates only to the items named therein.—People v. Garner, Ill., 108 N. E. 344.

46. **Election of Remedies**—Estoppel.—Where, in suit between H. and B., after H. purchased land under agreement to do so in trust for the two and others, B. claimed title adverse to the trust agreement and title purchased, this was a final and irrevocable election, barring his subsequent claiming in the title purchased.—Brown v. Howard, Mo., 175 S. W. 52.

47. **Eminent Domain**—Common Law Duty.—Railroad company held under no common-law duty at its own expense to build a bridge over a sanitary district channel constructed across its right of way after the building of its railroad.—Sanitary Dist. of Chicago v. Chicago & A. R. Co., Ill., 108 N. E. 312.

48. **Estoppel** — Chattel Mortgage. — Under "blanket" chattel mortgage by husband and wife, wife held not to have conveyed husband's property or warranted his title, and not precluded from purchasing his property from a prior mortgagee or from claiming title thereto.—King v. Thomas, Ala., 67 So. 241.

49.——Forfeiture.—A mining lessor, having appealed from a judgment denying forfeiture, cannot, during the pendency of the appeal, insist in another suit the lessee comply with the lease which required installation of costly machinery and continuous mining.—Weaver Mining Co. v. Guthrie, Mo., 175 S. W. 118.

50. **Execution**—Trover.—An owner of property wrongfully seized under execution levied under the express directions of plaintiff in execution may maintain trover against such plaintiff.—Toomer v. Fourth Nat. Bank of Jacksonville, Fla., 67 So. 225.

51. **Executors and Administrators**—Will Contest.—The judgment of the circuit court in a will contest, denying validity to the will, does not end the contest or set aside the appointments, since the executor may appeal, although his powers to administer the estate are suspended during the pendency of such appeal.—Dinwiddie v. Shipman, Ind., 108 N. E. 228.

52. **Explosives**—Gas Pipes.—Blasting in laying gas pipes resulting in water percolating from pond into abutting owner's cellar held to give him no right of action at common law in the absence of negligence.—MacGinnis v. Marlborough & Hudson Gas Co., Mass., 108 N. E. 364.

53. **False Pretenses**—Definition.—The word "obtain," as used in Gen. Code, § 13104, includes, not only the getting, securing, or appropriating of money or property as owner, but an acquisition by way of a loan.—Tingue v. State, Ohio, 108 N. E. 222.

54. **Fraud**—Representation. — Purchaser of timber land, to whom seller represented that it contained a certain acreage, which could not be ascertained by inspection, held entitled to rely on such representation, without further investigation.—Worcester v. Cook, Mass., 108 N. E. 511.

55. **Game**—Dealers in.—Act No. 47 of 1914, § 8, under which sportsmen may hunt game between November 1st and February 15th does not conflict with section 11, permitting dealers to sell certain game between December 15th and February 15th.—State v. Gaspar, La., 67 So. 348.

56. **Health**—Governmental Agency. — The health board of the city of Detroit is a state governmental agency, and its employes need not pass the examination required by the civil service act of the city.—Civil Service Commission of City of Detroit v. Engel, Mich., 150 N. W. 1081.

57. **Highways**—Instructions.— Plaintiff was entitled to affirmative instructions as to the plea of contributory negligence, where she was driving a cow along a country road and was approached by defendant in his automobile from the rear steadily until he struck her, he knowing that she did not hear his horn.—Dozier v. Woods, Ala., 67 So. 283.

58. **Homicide**—Dying Declarations.—That part of a dying declaration in which deceased said that accused had murdered him and that he hoped that the people of the county would see that the accused was dealt with justly is inadmissible.—Autrey v. State, Ala., 67 So. 237.

59. **Husband and Wife**—Laches.—One asserting under a marriage settlement an equitable right to support out of the income of lands held by others for 30 years, he having been of age for 10 years, is barred by his own laches.—Dallas Compress Co. v. Smith, Ala., 67 So. 289.

60.——Public Policy.—A contract of separation, which contained a false statement and undertook to divest the wife of all interest in her husband's property, giving her nothing in return, held against public policy and void.—Speiser v. Speiser, Mo., 175 S. W. 122.

61. **Indictment and Information**—Practice.—The action of the court in excusing one placed on the grand jury through mistake, and calling the one intended and excusing him, and placing the next man on the list on the jury did not render the grand jury illegal.—Ex Parte Rogers, Ala., 67 So. 253.

62. **Insurance**—Accident.—Insured in an accident policy could not recover for an injury resulting from a voluntary fight with another.—Hutton v. States Accident Ins. Co., Ill., 108 N. E. 296.

63.——Condition Precedent.—Under a life insurance policy making it a condition precedent to recovery that proofs of death be furnished as required therein, a failure to furnish such proofs, without claiming or showing any excuse, defeats a recovery.—American Nat. Life Ins. Co. v. Rowell, Tex., 175 S. W. 170.

64.——Estoppel.—Where an insurer agreed to and made an indorsement on the policy, naming the first beneficiary's sister as the beneficiary, it was bound by it, even though the request to do so was not made on the form provided by it.—American Nat. Ins. Co. v. Burnside, Tex., 175 S. W. 169.

65.——Material Representation.—Representation by applicant for insurance that automobile was 1910 model, when it was a 1907 model, held material to the risk as a matter of law within Rev. St. 1909, § 7024.—Smith v. American Automobile Ins. Co., Mo., 175 S. W. 113.

66. **Intoxicating Liquors**—Keeping.— Under Rev. St. 1909, § 7227, persons in possession of beer in barrels as servants of the purchaser were "keeping" it, provided they knew that they were transporting beer to the purchaser.—State v. Brown, Mo., 175 S. W. 131.

67. **Judgment**—Reduction of.—Maker of note, against whom judgment was obtained, may not obtain reduction by the amount received by the payee holding as collateral a second mortgage of surplus proceeds of foreclosure of first mortgage.—Carter v. Exchange Trust Co., Mass., 108 N. E. 359.

68. **Landlord and Tenant**—Notice.—A landlord showing title in himself, and who, having given the notice necessary to terminate the tenancy, had a right to the possession at the commencement of his suit, held entitled to judgment.—Harris v. Hill, Ala., 67 So. 284.

69. **Libel and Slander**—Newspaper Article.—A newspaper article, charging the slayers of one accused of murder with lynching, held a libel on plaintiff, though his name was not mentioned. Chapa v. Abernethy, Tex., 175 S. W. 166.

70. **Mandamus**—Insolvency Proceedings. — A purchaser of the property and franchises of an electric lighting plant in insolvency proceedings could be compelled by mandamus to operate the plant for the benefit of the public.—State v. Benson, Miss., 67 So. 214.

71.——Petition For.—On report by a single justice who, after hearing on an agreed statement of facts, dismissed the petition for mandamus, the only question to be considered is whether the petitioner was entitled to the writ as a matter of law.—O'Brien v. Cadogan, Mass., 108 N. W. 363.

72. **Master and Servant**—Counts in Pleading.—A railroad employe suing for personal injury may allege, in different counts, causes of action under the federal and state Employers' Liability Acts, but he can only recover under one.—

Ex parte Atlantic Coast Line R. Co., Ala., 67 So. 256.

73.——Delegable Power.—The rule that a mine operator cannot delegate the duty imposed on him by Rev. St. 1909, § 8445, to provide sufficient ventilation, held not to prevent him from requiring that the employe cut a hole necessary to the proper ventilation of his place of work.—Perry v. Northwestern Coal & Mining Co., Mo., 175 S. W. 140.

74.——Evidence.—Though plaintiff could not read, evidence that he accepted checks marked in full for labor for the balance defendant claimed he owed was admissible in determining whether there was a contract to pay extra for Sunday work.—Wiefenbach v. Lamp, Iowa, 150 N. W. 1045.

75.——Guarding Machinery.—In an action for death of a servant injured by unguarded set screws, held that defendant was not liable if sunk screws in use when deceased began work were changed to set screws without defendant's knowledge.—Winn v. Town of Anthon, Iowa, 150 N. W. 1036.

76.——Inspection.—A temporary staging, furnished by defendant's servants and not dangerous or complicated, held not an instrumentality which it was the master's absolute duty to furnish or inspect.—Berg v. Pittsburg Const. Co., Minn., 150 N. W. 1092.

77.——Negligence.—Act of superintendent, in directing a bricklayer at work on a scaffold to go on the wall known by superintendent to be dangerous and adjust in place an iron plate, held negligence under the Employers' Liability Act.—Wittgren v. Wells Bros. Co. of New York, N. Y., 108 N. E. 213.

78.——Promise to Repair.—The rule that an employe using defective machinery after promise to repair assumes the risk is not controlling, where no definite time was fixed for the repairs, and the employe relied on assurance that repairs had been made.—Wheeler v. Chicago & W. I. R. Co., Ill., 108 N. E. 330.

79. **Mortgages**—Attorney Fees.—A provision of a mortgage, for payment of attorney's fees on collection "by foreclosure or otherwise," held not to require payment of attorney's fees where collection was not by foreclosure, though made by an attorney.—Roessler v. Armstrong, Fla., 67 So. 229.

80.——Foreclosure.—Where the wife of the owner of certain land subject to deeds of trust executed by his grantor was not made a party to suits to foreclose, the foreclosure decrees were not void, but there was a mere outstanding right in the wife to redeem.—Bigoness v. Hibbard, Ill., 108 N. E. 294.

81. **Municipal Corporations**—Assessments.—Local Improvement Act, §§ 57, 58, as amended by Laws 1913, p. 166, permitting the board of local improvements to make a reassessment where the assessment for a local improvement has been declared void, held not to violate Const. art. 9, § 9.—City of Lincoln v. Harts, Ill., 107 N. E. 725.

82.——Assumption of Risk.—A motorcycle ridan approaching motor truck on the right side an approachin motor truck on the right side of the street, could assume that the truck would continue on that side,—Elgin Dairy Co. v. Shepherd, Ind., 108 N. E. 234.

83.——Ordinance.—On a question of the reasonableness of a city ordinance requiring the consent of the majority of the residence owners in accordance with frontage, evidence tending to show that the erection of billboards is productive of fire, and that residence districts are not so well protected as the business district, is admissible.—Thomas Cusack Co. v. City of Chicago, Ill., 108 N. E. 340.

84.——Paving Contracts.—Where the lowest bidder to whom paving contracts have been awarded acknowledges his inability to give the required security, the contracts may be awarded to the next lowest bidder without readvertisement.—Leitz v. City of New Orleans, La., 67 So. 339.

85. **Partnership**—Overdraft.—An agreement by a partner overdrawing his account and purchasing copartner's interest to pay to copartner the amount of the overdraft when accounts due the firm were collected gives him a reasonable time to pay the amount.—Hink v. Smith, Iowa, 150 N. W. 1069.

86. **Physicians and Surgeons**—License.—Board of medical examiners, having received money paid under protest for a license as an itinerant physician, had no authority to agree to return the same if the law was declared unconstitutional.—Longstaff v. State, S. D., 150 N. W. 1100.

87. **Principal and Agent**—Disqualification.—That the purchaser of land, before buying, had talked with the owner's agent about getting his help in selling the timber on the land, and had paid him something therefor, did not, as matter of law, disqualify the agent from further representing the owner.—Worcester v. Cook, Mass., 108 N. E. 511.

88.——Scope of Power.—Where a proprietor negligently permits a person to be in apparent charge of his place of business, he cannot take advantage of the imposter's lack of authority.—Miltonberger v. Hulett, Mo., 175 S. W. 111.

89. **Principal and Surety**—Apportionment of Loss.—One becoming a surety with others impliedly contracts to contribute his proportion according to the number of sureties, but equity will apportion the loss among solvent sureties.—Trego v. Cunningham's Estate, Ill., 108 N. E. 350.

90.——Notice.—Where an employer discovers dishonesty of his employe and fails to give notice thereof to the surety on his bond, the surety is not liable for subsequent defaults.—Alabama Fidelity & Casualty Co. v. Alabama Fuel & Iron Co., Ala., 67 So. 318.

91. **Quieting Title**—Service by Publication.—Where, in a suit to quiet title, certain heirs of the common source were served by publication only, and did not appear, the court, having found that plaintiff was a tenant in common only, properly dismissed the suit without prejudice to his claim for improvements, less rents and profits, etc.—Terry v. Unknown Heirs of Gibson, Miss., 67 So. 209.

92. **Receiving Stolen Goods**—Evidence.—On a trial for receiving stolen goods the state may prove that on information received officers found a toy at accused's house, and identify it as one taken from the house burglarized without going into details.—Barker v. State, Tex., 175 S. W. 151.

93. **Remainders**—Right of Action.—In equity, a remainderman need not sue until his interest falls into possession, unless the alleged wrong is presently efficient, according to the limitations of the title under which he claims, to cut off his interest in the remainder.—Dallas Compress Co. v. Smith, Ala., 67 So. 289.

94. **Sales**—Acceptance.—Where the seller delivers cross-ties at a point specified in the contract, he may recover for the buyer's failure to accept the ties so delivered, though the contract is not sufficiently certain as to the quantity of ties to be delivered.—American Tie & Timber Co. v. Naylor Lumber Co., Ala., 67 So. 246.

95. **Slaves**—Collateral Kindred.—Under Kirby's Dig. § 2638, and Act Feb. 6, 1867 (Laws 1866-67, p. 99) § 3, the collateral kindred of a decedent who was born a slave, and who traced their descent from decedent's mother who was twice married, might inherit from decedent.—Wilson v. Storthz, Ark., 175 S. W. 45.

96. **Specific Performance**—Discretion.—Specific performance rests in chancellor's sound discretion, to be exercised as equity may require; but it is not an arbitrary discretion.—Africani Home Purchase & Loan Ass'n v. Carroll, Ill., 108 N. E. 322.

97.——Equity.—A contract to purchase corporate stock may be specifically enforced by the seller, where the difficulty of ascertaining the value of the stock renders the remedy at law inadequate.—First Nat. Bank of Hastings v. Corporation Securities Co., Minn., 150 N. W. 1084.

98.——Statute of Frauds.—Where change of possession and part payment under a parol contract for the sale of lands are relied upon to remove the bar of the statute of frauds, the court will exercise its discretion and deny relief if the contract is inequitable.—Sherman v. Sherman, Ala., 67 So. 255.

99. **States**—Appropriations.—An appropriation for an exhibition at an exposition cannot be sustained as an appropriation for necessary expenses of the government by analogy to appropriations for the bureau of agriculture, mining, and manufacturing, which is expressly provided for by Const. art. 10.—Belote v. Coffman, Ark., 175 S. W. 37.

100. **Street Railroads**—Burden of Proof.—One suing a street railway company for injuries by a defect on a street occupied by the company held required to show that the place of the accident was within the limits of the city at the time of the adoption of an ordinance authorizing the maintenance of a street railway and imposing the duty to keep the portion of the streets occupied by a street railway in good repair.—Brun v. P. Nacey Co., Ill., 108 N. E. 301.

101.——Negligence.—Failure of street car company to provide headlight sufficient to cast a light for the distance within which the car can be stopped or running of car that it cannot be stopped within the distance lighted by the headlight held negligence.—Montgomery Light & Traction Co. v. Baker, Ala., 67 So. 269.

102.——Rate of Speed.—The driver of a buggy crossing a street car track can rely upon the assumption that a car is not exceeding a lawful rate of speed, in the absence of notice or knowledge that it was exceeding the speed limit.—Union Traction Co. v. Cauldwell, Ind., 107 N. E. 705.

103. **Taxation**—Inheritance Tax.—Inheritance Tax Act, § 21, in view of Hurd's Rev. St. 1913, c. 36, is invalid, so far as it allows the treasurer of Cook county commissions in excess of the salary prescribed by Const. art. 10, § 9, Fees and Salaries Act, § 31.—Jones v. O'Connell, Ill., 107 N. E. 731.

104.——Succession Tax.—The devolution of debts owed by residents and of stocks of national banks located in Minnesota is subject to the succession tax, though the debts were owing to and the stock held by nonresident decedents.—State v. Probate Court of St. Louis County, Minn., 150 N. W. 1094.

105. **Tenancy in Common**—Election.—Where a tenant, in common acquires an outstanding title, tenants must elect within a reasonable time to adopt the purchase and contribute their portion of the expense, or to repudiate it.—Brown v. Howard, Mo., 175 S. W. 52.

106. **Trusts**—Executed Conveyance. — Under deed conveying land in trust, income to be paid to grantor and property to vest in his heirs at his death, held that there was a complete, executed conveyance for the use of such persons as should constitute his heirs.—In re Tolerton's Estate, Iowa, 150 N. W. 1051.

107.——Misconduct.—That one-third of the income from trust property was expended for betterments on the trust property does not show misconduct on the part of the trustee, where no items were shown to have been improper.—In re Weller's Estate, Ill., 108 N. E. 306.

108.——Negligence.—A corporation allowing its treasurer to use its money to purchase property taken in his own name held chargeable with such culpable negligence as to estop it from establishing a resulting trust therein as against one who had loaned money on the faith of the treasurer's apparent ownership.—H. C. & W. B. Reynolds Co. v. Reynolds, Ala., 67 So. 293.

109. **Usury**—Estoppel.—A subsequent purchaser, who has expressly assumed payment of a mortgage as part of the price, is estopped to defend against foreclosure on the ground of usury.—Powell v. Petteway, Fla., 67 So. 230.

110. **Vendor and Purchaser**—Liquidated Damages.—Vendor and purchaser may agree that the purchaser will pay a sum as liquidated damages if he withdraws the offer before reasonable opportunity for acceptance, or fails to consummate the offer by purchase.—Sooy v. Winter, Mo., 175 S. W. 132.

111.——Notice.—Defendants buying property held chargeable with notice of the terms of a marriage settlement in the recitals of their deeds and of the defects in their title arising from unauthorized execution of the power of sale under the settlement.—Dallas Compress Co. v. Smith, Ala., 67 So. 289.

112.——Parol Agreement.—Parol agreement by vendor, who contracted to convey free from incumbrances, to pay a mortgage is part of the consideration for a subsequent acceptance of a deed and transfer by purchaser of the consideration.—Burk v. Brown, Ind., 108 N. E. 252.

113.——Possession.—Where, at time payment was to be made and deed delivered, the abstract was defective, but purchaser took possession pending the perfecting of the title, he is liable for the specified payment and for interest thereon until the payment was made.—Kretzinger v. Emering, Iowa, 150 N. W. 1038.

114. **Waters and Water Courses**—Easement.—Owners of lots, with easement for unobstructed flow of water diverted into one channel by dam, held entitled to remove obstructions placed in such channel, even though one of them was using water on land other than the lots to which it was appurtenant.—Allott v. American Strawboard Co., Ill., 108 N. E. 284.

115. **Wills**—Conjoint Will.—Where a conjoint will by two persons gave the survivor only a life estate with remainder over to a third person, the instrument may successively be proven upon the death of each as his individual will.—Rastetter v. Hoeninger, N. Y., 108 N. E. 210.

116.——Construction.—A devise to testator's son with provision that on his death before his youngest child is 16, the property shall be a home for his wife and children, includes children of a second marriage.—Sutton v. Greening, Ky., 175 S. W. 1.

117.——Contest.—Where executors, defendants in a will contest, appealed from a judgment of the circuit court denying the validity of the will, the appointment of an administrator by such court before the final determination of the appeal was improper.—Dinwiddie v. Shipman, Ind., 108 N. E. 228.

118.——Gift to Class.—A "gift to a class" is a gift of an aggregate sum to a body of persons uncertain in number at the time of the gift, to be ascertained at a future time, and who are all to take in equal, or in some other definite proportions.—Volunteers of America v. Pierce, Ill., 108 N. E. 318.

119.——Lost Will.—A verbal variance between a lost will, as set out in a petition for its probate, and the proof of its contents, will not preclude probate, where the substance is the same.—Allen v. Scruggs, Ala., 67 So. 301.

120.——Partition.—In action to partition land devised in remainder to children, subject to certain charges, child, charge against whom exceeded his share of all the charges, held not entitled to his share in the charges as against the holder of a sheriff's deed to his interest.—Baker v. Terrell, Iowa, 150 N. W. 1065.

121.——Remainder.—Where a father devised land to his daughter for life, the will reciting that after her death the property should be equally divided among his children, the death of the daughter merely fixed the time for the remainders to come into possession and not the time when the class entitled to take should be determined.—Lynn v. Worthington, Ill., 107 N. E. 729.

122. **Witnesses**—Cross-Examination.— Where the state examines its witness as to his reasons for leaving another state, defendant's counsel may, on cross-examination, ask the witness whether there is a charge of murder pending against him in the state whence he came.—State v. Barnes, La., 67 So. 349.

123.——Waiver.—One voluntarily testifying at a hearing of charges in connection with a nomination at a judicial convention did not waive his right to decline to testify on a subsequent trial of one indicted for an offense in connection with the nomination.—People v. Cassidy, N. Y., 107 N. E. 713.

124. **Work and Labor**—Gratuitous Services.—Where a father allowed his sons to conduct his livery stable business, and they collected and enjoyed the profits, he is not liable to them for work and labor done in connection with the business.—Bettinger v. Bettinger, Iowa, 150 N. W. 1025.